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MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			COURSON, TANIA C	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,604	Applicant(s) NAIDOO, SOPRAGASEN
	Examiner TANIA C. COURSON	Art Unit 2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7,10-13,15,17-19,21-24 and 26 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,10-13,15,17-19,21-24 and 26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13APR06 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 13APR06
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s):

- a) claim 1, line 3, "overhead cable";
- b) claim 1, lines 5 and 12, respectively, "power line";
- c) claim 1, line 12, "power line";
- d) claim 6, line 2, "power line";
- e) claim 11, line 3, "overhead cables";
- f) claim 15, line 2, "overhead cable";
- g) claim 17, line 2, "remote activation";
- h) claim 19, lines 3-4, "overhead cable";
- i) claim 19, line 11, "power line";
- j) claim 24, line 2, "cable", and;
- k) claim 26, line 2, "remote activation".

No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Regarding claims 1 and 19, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 7, 10-13, 15, 18-19 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Donoho (US 2004/0255837 A1).

Donoho discloses in Figures 1-3, a bird deterrent comprising:

With respect to claims 1-5, 7, 10-13, 15 and 18:

- a) a clamping means (30) for clamping the device on the overhead cable (2), the clamping means including a first member (54) having a hook portion for hooking over the power line (Fig. 3); and a second member (62) biased towards the hook portion (Fig. 2 and paragraph 22), wherein said biased member includes a biasing means (paragraph 22); and at least one vane set (10) rotatably attached to the clamping means (Fig. 3), wherein the first and

second members are displaceable relative to each other between a first loaded position (Fig. 2 and paragraph 22), wherein the biasing means is loaded, and a second clamped position, wherein the biasing means is at least partially unloaded thereby clamping the power line between the first member and the second member (Fig. 2 and paragraph 22);

- b) wherein the vane set is fluorescent thereby to increases the visibility of the vanes to the birds (paragraph 16);
- c) wherein the vanes of the vane set are alternately coloured with a first colour and a second colour thereby to be visible to the birds both by day and by night (paragraph 16);
- d) wherein the vane set is reflective (paragraph 16);
- e) wherein the vanes are configured to rotate in response to the wind (Fig. 3);
- f) wherein the vanes are rotatably attached to the clamping means by a suspension means (32);
- g) wherein the biasing means includes a spring (paragraph 22);
- h) wherein the second member includes a securing means (46) configured to keep the second member in the first position ready for clamping onto the overhead cables (Fig. 2);
- i) wherein the second member includes a securing means (46) configured to keep the second member in the second clamped position (Fig. 2);
- j) wherein the first member is substantially C-shaped (Fig. 2);

- k) wherein the upper section of the C-shape is the hook portion for hooking over the overhead cable (Fig. 3);
- l) wherein the first member includes a ratchet (46) configured to assist in keeping the second member in the second clamped position (Fig. 2).

With respect to claims 19 and 21-24:

- a) a first member (54) having a hook portion for hooking over the overhead cable (2); a second member (62) biased towards the hook portion (Fig. 2 and paragraph 22); and biasing means for biasing the second member towards the hook portion (Fig. 2 and paragraph 22); and wherein the first and second members are displaceable relative to each other between a first loaded position, wherein the biasing means is loaded, and a second clamped position, wherein the biasing means is at least partially unloaded thereby clamping the power line between the first member and the second member (Fig. 2 and paragraph 22);
- b) wherein the second member includes a securing means (46) configured to keep the second member in either the first or second position (Fig. 2);
- c) wherein the first member is substantially C-shaped (Fig. 2);
- d) wherein the lower section of the C-shape is configured to house the second member in the first position when loaded (Fig. 2);
- e) wherein the upper section of the C-shape is the hook portion for hooking over the cable (Fig. 2).

With respect to the preamble of the claims 1 and 19; the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Donoho in view of Richter (US 5,058,335).

Donoho discloses a bird deterrent, as stated above in paragraph 4.

Richter does not disclose vanes/deterrent set configured to rotate in response to vibrations from a power line.

Richter teaches an anti-bird device that consists of vanes/deterrent set configured to rotate in response to vibrations from a power line (column 3, lines 25-42). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further

modify the bird deterrent of Donoho, so as to include vanes/deterrent set configured to rotate in response to vibrations from a power line, as taught by Richter, in order to increase the movement capabilities of the deterrent device.

7. Claims 17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donoho in view of Takashi et al. (JP-2002-176901).

Donoho discloses a bird deterrent, as stated above in paragraph 4.

Donoho does not disclose configured to be released by remote activation.

Takashi et al. teaches an inhibiting bird device that consists of configured to be released by remote activation (B). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the bird deterrent of Donoho, so as to include remote activation, as taught by Takashi et al., in order to increase accessibility to the movement capabilities of the deterrent device.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a bird deterrent:

Ramirez et al. (US 2009/0016689A1)

Hally (US 2008/0047191)

Sullivan (US 2008/0178791)

Watermann (US 6,807,765 B2)

Laidler (US 6,742,471 B2)

Kaithly (US 6,742,470 B2)

Staggs (US 5,448,138)

Walker et al. (US 4,941,633)

Milton et al. (US 4,839,567)

Mendall (US 3,487,569)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday-Friday from 7:30AM to 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard, can be reached on (571) 272-1984.

The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. A. Smith/
Primary Examiner, Art Unit 2841

TCC
March 14, 2009